

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 108

LPA No.379 of 2020 (O & M)
In CWP No.35978 of 2019

Decided on: *June 11, 2020*

**The IK Gujral Punjab Technical University Jalandhar, Kapurthala -
Jalandhar Highway & another**

....Appellants

Versus

Rohan Jain & another

.....Respondents

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Rajiv Atma Ram, Senior Advocate, with Mr. Arjun Pratap Ram, Advocate and Mr. Tribhawan Singla, Advocate, for the appellants.

Mr. Prateek Pandit, Advocate, for respondent No.1.

Sant Parkash, J

The present appeal is directed against judgment dated 28.02.2020 passed by the learned Single Judge, whereby Civil Writ Petition No.35978 of 2019 preferred by respondent No.1 - Rohan Jain, has been allowed.

Brief facts of the case are that respondent No.1 took admission in respondent No.2 - DAV Institute of Engineering & Technology, Kabir Nagar, Jalandhar (for short, 'Institute') in B.Tech (Computer Science & Engineering) during the academic Session 2018-19. On 24.05.2019, he was found to be using unfair mean with the help of an Apple smart watch on his hand while taking the physics examination of 2nd semester. He was found continuously cheating and the whole book was captured by that smart watch. When confronted, the respondent admitted his mistake and expressed guilty for his action. His statement (Annexure P-7) was also recorded. In these

Circumstances, an Unfair Means Committee was constituted against the

respondent and he was charge-sheeted vide Annexure P-6. Thereafter, the respondent appeared for hearing before the Unfair Means Committee on 12.06.2019 and again admitted his guilt. Resultantly, punishment of disqualification for two semesters in terms of Regulation 11.1 of the Ordinance was imposed by the Committee vide communication dated 08.07.2019 (Annexure P-9).

The respondent preferred an appeal against aforesaid communication dated 08.07.2019, which was dismissed by the Registrar of the University vide order dated 25.09.2019 (Annexure P-11). This order was challenged by the respondent by way of filing CWP No.31824 of 2019, titled as 'Rohan Jain vs. I.K. Gujral Punjab Technical University & others', which was allowed by this Court vide judgment dated 21.11.2019 (Annexure P-13), thereby setting aside order dated 25.09.2019 and the matter was remanded to respondent Nos.1 and 2/University to place the appeal filed by the petitioner before the competent authority for fresh decision in accordance with law before the date of commencement of examinations on 29.11.2019. The Vice Chancellor of the University, thereafter, dismissed the appeal of respondent - Rohan Jain vide order dated 26.11.2019 (Annexure P-16). In the interregnum, the Institute, vide office circular dated 17.09.2019 (Annexure P-10), had struck off the name of the respondent from its rolls. In this backdrop of facts, the respondent preferred the present CWP No.35978 of 2019 titled 'Rohan Jain vs. I.K. Gujral Punjab Technical University & others' challenging orders dated 08.07.2019 (Annexure P-9), 17.09.2019 (Annexure P-10) and 26.11.2019 (Annexure P-16).

After hearing counsel for the parties, learned Single Judge, vide judgment dated 28.02.2020 allowed the writ petition and quashed the aforesaid impugned orders.

Now, the appellant - University has assailed the aforesaid judgment of the learned Single Judge.

We have heard learned counsel for the parties and perused the record.

It is the contention of learned counsel for the appellants that mere possession of the smart watch even without being connected with any mobile phone or any mode of electronic communication would amount to using unfair means. Even carriage of mobile phone or any mode of electronic communication would constitute an act of indiscipline and the punishment awarded by the appellant - University was in consonance with the provisions as contemplated under Regulation 10(z) read with Regulation 11.1 of the Ordinance.

In order to appreciate the aforesaid contentions, Regulations 10(z) and 11.1 of the Ordinance are reproduced hereunder:-

"10(z). (i) Carriage of mobile or other means of electronics communication inside the examination hall (even in off condition).

(ii) Communicating or trying to communicate, by any means whatsoever, through electronic media or otherwise with any other person in a manner that is indicative of help being sought/given in an examination."

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11.1 :-

I. For offences under clauses (c), (k) and (r)	Disqualification for a period that may extend to two semesters but be not less than one semester
II. For offences under clauses (a), (d), (e), (g), (h), (i), (j), (l) (v), (x) and (z)	Disqualification for a period of not less than two semesters

III. For offences under clauses (m) and (t)	Disqualification for a period of not less than three semesters
IV. For offences under clauses (n) and (o)	Disqualification for a period of not less than four semesters
V. For offences under clauses (s) and (u)	Disqualification for a period of not less than five semesters
VI. For offences under clause (p)	Disqualification for a period that may be extend of five semesters
Vii. For offences under clause (y)	Disqualification for a period that may extend to five semesters, but be not less than two semesters.

From the above, it is crystal clear that the mere usage/possession of any mode of communication would attract penalty under Section 11.1 of the Ordinance. It nowhere stipulates that the smart watch should have the connectivity with the mobile phone or any other mode of communication as argued by counsel for respondent. It would attract the penalty even if it is off. It cannot be expected that the respondent, who was found in possession of the smart watch was not having the knowledge or was not aware of the fact because it is a common practice that at the time of the examination, these instructions are read over in open examination room or even are pasted outside the examination centre.

While allowing the writ petition, learned Single Judge has observed that the principles of natural justice were flouted with impunity. The said finding in Para 12 of the impugned judgment is reproduced here-in-below:-

"12. Admittedly, the material relied upon by the Unfair Means Committee such as the Apple watch, the complaint made against the petitioner, statement of the complainant and the CCTV footage have not been shown to the petitioner on the ground that he had admitted his guilt. Although, the case of the

petitioner is that he never admitted his guilt but only apologized for his action of arguing with the Supervisor. Assuming the same to be correct, it is not permissible for the authorities to give a go bye to the principles of natural justice incorporated in the aforementioned Ordinance."

Admittedly, the authority passing any adverse order against any person is legally and morally bound to adhere to the principles of natural justice. But in the case in hand, the situation is entirely different. As pointed out earlier, the respondent himself admitted his guilt at two junctures. Firstly, at the time when he was apprehended in the examination centre and secondly, before the Unfair Means Committee where he appeared on 12.06.2019 alongwith an explanation. Since there was a clear cut admission/confession of the respondent himself, there was no need to go into the further details as to whether the smart watch being used by the respondent was actually capable of being used for unfair means or not. No charge was required to be framed and proved in such an eventuality.

Similar question came before the Hon'ble Supreme Court in Surjeet Singh Bhamra vs. Bank of India & others, 2016(4) SCC 204, wherein the appellant was posted as Branch Manager, Bank of India, Panagar Branch, Jabalpur Region from 04.07.1996 to 26.05.1999. A memo was issued by the Chief Regional Manager, Bank of India, Jabalpur to the appellant mentioning therein that during his tenure as Manager of Panagar Branch, certain irregularities/lapses were reported in disbursement of loans. He was served with a charge-sheet. The appellant filed his reply to the charge-sheet and accepted all the charges contained therein unconditionally. Accordingly, the Chief Manager, Dewas Branch and Disciplinary Authority,

the appellant by five stages in the time scale for a period of 3 years and on the expiry of such period, the reduction was to have the effect of postponing the future increments of his pay to the extent in terms of Regulation No.4(1) of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (in short "the Regulations"). However, the Supreme Court upheld the imposition of punishment while holding :-

"48. As a matter of fact, since the appellant admitted the charges leveled against him in the charge-sheet, there was no need for the Bank to have held any inquiry into the charges. When the charges stood proved on admission of the appellant, the Bank was justified in imposing punishment on the appellant as prescribed in the Rules. We therefore, find no ground to interfere in the punishment order as we also find that having regard to the nature and gravity of the charge, the punishment imposed on the appellant appears to be just and proper, calling no interference therein."

Learned counsel for the respondent has vehemently argued that the definition of "any other mode of communication" is not exhaustive and it does not mention as to what sort of mode of communication is to be included therein. This contention is totally misconceived and deserves to be discarded at the very outset. For the sake of repetition, it would be pertinent to mention here that mere possession of smart watch, even without being connected with any mobile phone or any mode of electronic communication, can be said to be an unfair mean as contemplated under Regulation 10(z)(i), reproduced above. Moreover, it is for the competent authority, who has framed the rules, to interpret the rules in its own way. The respondent cannot

admitted his guilt of possessing the smart watch and at the same time, he is expecting the authority concerned to act in a fair and reasonable manner.

It is further submitted on behalf of respondent that there was no evidence that the smart watch was being used or capable of being used as unfair mean. Even this submission is meaningless. If the respondent was innocent, he could have proved his innocence by placing reliance upon the report of any technical expert either before the Unfair Mean Committee or before the learned Single Judge or even before us.

For the foregoing reasons, we find considerable merit in the appeal and while reversing the impugned judgment of learned Single Judge, we allow the instant appeal.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

June 11, 2020
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Whether Speaking : Yes/No
To be reported or not : Yes/No